

**IN THE HIGH COURT OF NEW ZEALAND  
PALMERSTON NORTH REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TE PAPAIOEA ROHE**

**CRI-2020-054-2399  
[2021] NZHC 3357**

**THE QUEEN**

v

**DEAN PHILIP EATON**

Hearing: 8 December 2021

Appearances: B D Vanderkolk and G J C Carter for Crown  
P L Murray and T E Hesketh for Defendant

Sentencing Date: 8 December 2021

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**SENTENCING NOTES OF ISAC J**

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**Introduction**

[1] Mr Eaton, you are here for sentence for the murder of Ricky Osgood. You are also to be sentenced on a charge of attempting to pervert the course of justice. My remarks will take a little while, so you may sit while I am talking, and I will get you to stand up at the end.

[2] Mr Osgood was an outgoing, larger than life man. Those close to him tell me he was a bit of a character. At 34 he had his life ahead of him. He had two young children, a loving partner, and was adored within his wider family. Before I begin my sentencing remarks, I acknowledge Mr Osgood's family and loved ones. I commend you on the courage you showed in reading your victim impact statements out to the Court. Of course, no sentence can adequately respond to the loss that you have suffered

— and nothing will bring Mr Osgood back — but I hope some sense of justice is provided to you today.

[3] I should also say to all those here today that I presided over the trial and heard all the evidence, and I have had time to consider counsels' submissions and some reports in order to reach the sentence that I am going to impose.

[4] Mr Eaton, my approach to sentencing you today will be this: I will first outline the facts of your offending and I will then explain the approach that is taken to the sentence for murder. I will then address circumstances that are relevant to your sentence before formally imposing sentence on you.

[5] The required sentence for murder is life imprisonment except in limited circumstances. It is agreed that those limited circumstances do not apply in your case. So, life imprisonment will be your sentence. As you have heard from counsel the key question for me today is what minimum non-parole period (what the lawyers refer to as an MPI) you should serve before you are eligible to be released on parole.

[6] There are several things I must consider in determining the appropriate MPI in your case, but I am going to begin by summarising what you did on 8 September 2020.

### **The facts**

[7] That morning of you were dropped by associates at Ms Tyacke and Mr Osgood's address on the pretext of obtaining cannabis. It was broad daylight.

[8] Ms Tyacke is the mother of two of your children, and your relationship with her had been difficult. She was in a relatively new relationship with Mr Osgood. It seems clear you had not moved on and you were jealous. In the days prior, there had been increasing tension between the three of you, including repeated threats — in texts you sent to Ms Tyacke —that you were going to kill Mr Osgood.

[9] You wore a stab proof vest and you were carrying a knife. You entered the property through a closed but unlocked gate and challenged Mr Osgood to a fight. Mr Osgood armed himself initially with a hammer and confronted you. An argument

ensued. Ms Tyacke stood between the two of you while insults were traded. She managed to convince Mr Osgood to go inside, which he did. She then remonstrated with you over a period of time to get you to leave the property.

[10] Despite many opportunities to leave, you chose to remain. You continued to yell threats at Mr Osgood and challenged him to come out for a fight. When it was clear that was not working, you picked up a block of wood and began tapping it on the lounge window to antagonise Mr Osgood. You then swung the block of wood at Ms Tyacke, threatening her. I am sure you did so to goad Mr Osgood to come out of the house.

[11] And that worked. Mr Osgood did come out to confront you, no doubt convinced that you were now a threat to Ms Tyacke. You both started wrestling, with Ms Tyacke and another man attempting to separate you. While on the ground, you stabbed Mr Osgood three times in the side. Two of those wounds were very serious. One, or both of the most serious, severed an artery. It seems clear you did this while Mr Osgood was unarmed.

[12] Mr Osgood got up and attempted to walk back inside but collapsed at the front door. You left the address in the car driven by an associate.

[13] Ricky Osgood was taken immediately to Palmerston North Hospital in a critical condition. Despite the efforts of the clinicians, he died five hours later from blood loss.

[14] After the stabbing you sent a text message to Ms Tyacke seeking to establish an alibi for yourself. You also sought to enlist an associate and his mother to provide you with one. It reflects poorly on you Mr Eaton that even after you had seriously wounded a man who was fighting for his life in hospital your first thought was not for him but for yourself.

[15] The jury verdict indicates that they rejected your claims that you acted in self-defence, and that you did not intend to kill Mr Osgood. I take into account, however, the fact that the Crown's case was presented on the basis that you did not mean to

cause Mr Osgood's death; instead, you intended to cause him very serious harm, appreciating that in doing so you might cause his death, but took that chance anyway. I also consider the jury's rejection of your defences necessarily involves a rejection of your claim that you had an innocent reason for wearing the stab-proof vest and for taking the knife with you. I find that you took those items because your purpose was to have it out with Mr Osgood. That was, after all, what you said you wanted to do in the text messages you sent to Ms Tyacke.

[16] Turning to the perverting the course of justice charge, that offence was committed while you were remanded in custody in Manawatu Prison for the murder of Mr Osgood. In November 2020 you made three phone calls using the Prison's telephone to an associate's cell phone number. The associate was the victim of alleged kidnapping and serious violence. In all of the calls, which were recorded, you attempted to convince the associate to retract his statement in return for money.

### **Victim impact statements**

[17] It is clear that Mr Osgood's death has had a devastating impact on his family, some of whom were unable to return to New Zealand to say goodbye to him.

[18] We have heard today from Ms Boddington, Ricky's mother, his sister, Ms Dexter and his mother-in-law, Ms Osgood. I have also read the victim impact statements of Ms Tyacke and Ms Kennedy.

[19] A summary of what they have told the Court will not do justice to their statements, but a common theme throughout them is the immense sense of loss Mr Osgood's death has brought them, and how their lives have become immeasurably more difficult. They have lost a son, their brother, their partner. Two very young people have lost their father. Ms Kennedy spoke of how her granddaughter, Ricky's daughter, has lost her sparkle and her true smile since her dad left. Her grandson — who was just two and a half years old at the time of his father's death — waited on the doorstep daily for his dad to come home. But as Ms Kennedy says, he will not be coming home.

[20] In all, it is clear Mr Osgood's death has had an immense emotional and physical impact on his family. Things will not be the same for them ever again. So they suffer for what you have done.

### **Approach to sentencing for murder**

[21] I will now turn to the approach to sentencing for murder.

[22] I must sentence you to life imprisonment unless it is manifestly unjust to do so.<sup>1</sup> It is not suggested that the sentence of life imprisonment is unjust. As I have said, you will be sentenced to life imprisonment.

[23] The Court is required to impose a minimum term of imprisonment for murder of not less than 10 years having regard to the factors of accountability, denunciation, deterrence and community protection.<sup>2</sup> The MPI in individual cases goes up from 10 years depending on the seriousness of the circumstances of the murder and the personal circumstances of the offender. The minimum period of imprisonment must be at least 17 years if there are certain factors involved.<sup>3</sup> Counsel are agreed in this case that there are no features that would warrant the need to consider a 17-year minimum and that is right for them to make that submission.

[24] So, the question is whether the MPI should be set at 10 years, or more than 10 years.

### **Minimum period of imprisonment**

[25] Mr Carter on behalf of the Crown submits an MPI of no less than 12 years for the charge of murder, with an uplift of six months to reflect the perverting the course of justice charge is appropriate.

[26] You have heard his submissions so I will only summarise them. He says I should generally disregard your version of events, especially as it relates to certain features of the offending and in particular your claims at trial about the purpose for

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<sup>1</sup> Crimes Act 1961, s 172 and Sentencing Act 2002, s 102(1).

<sup>2</sup> Sentencing Act, s 103.

<sup>3</sup> Section 104.

which you carried the knife and wore the stab proof vest. He points to the implausibility of the explanation you gave to the jury. That going to Ms Tyacke and Mr Osgoods to obtain cannabis that you would not arm yourself in that way, and he points to the fact that there was evidence that at other times you did not wear the stab proof vest or carry the knife.

[27] On your behalf, Mr Murray submits that you only presented the knife immediately before it was used and while you had opportunities to leave the address and had become intent on confronting and fighting Mr Osgood, you did not mean to kill him. He also points out that although the jury rejected self-defence, there was evidence that Mr Osgood was the main aggressor for parts of the incident.

[28] As I see it, these are the key aggravating features of your offending. First, the use of the knife. You had it with you on your arrival at the address, and you were also wearing a stab proof vest. Your explanation that you always carried the knife and wore the vest was undermined by the evidence at trial that you were seen at times without them. And in any event, if you were simply going to the address for the reasons you said you were, I cannot see why you would need to carry a knife or wear the vest. The fact you did shows an element of premeditation. Next, there is the unlawful and sustained presence at the house. You were clearly not welcome. You had many opportunities to leave. But instead, you continued to provoke Mr Osgood in order to bring about a violent altercation.

[29] Third, the harm you caused was serious. You stabbed Mr Osgood three times with sufficient force to kill him. I am not prepared to accept Mr Osgood's actions are a mitigating feature of your offending. The jury of course rejected self-defence and any of Mr Osgood's actions must be seen in the context of you carrying a knife, wearing a stab proof vest, being at his property, unwanted, and then physically threatening his partner, Ms Tyacke.

[30] Although not to the same extent as the other aggravating factors I have just outlined, I also consider the fact you fled straight after stabbing and tried to cover your tracks — including attempting to create alibis with several people — as being an aggravating feature. Other relevant features include the fact you were on post-

detention conditions, and you had, in the days leading up to Mr Osgood's death, made threats against him.

### *Comparison with other cases*

[31] As well as considering these features of your offending, I have reviewed a number of sentencing decisions, including those which have attracted the statutory minimum of 10 years' imprisonment and others where there have been higher minimum periods have been imposed.<sup>4</sup> Of course, no two cases are the same. However, I have had particular regard to past cases that have involved murders where the circumstances and culpability have involved similarities to your offending. These tend to attract MPIs of between 11 years' and 12 and a half years'.<sup>5</sup>

[32] Taking the aggravating features of your offending into account, and considering the case law to which I have been referred, I consider that a minimum period of imprisonment higher than the statutory minimum is necessary to adequately hold you to account for your actions, to protect the community, and to denounce your actions. I consider an MPI of 11 years and nine months' is appropriate.

[33] From that, an uplift of six months is required for the perverting the course of justice charge to which you have pleaded guilty, and to recognise the fact the murder occurred while you were on post-detention conditions. So, the starting point is a minimum period of imprisonment of 12 years and three months.

### **Personal circumstances**

[34] I now turn to your personal circumstances that may impact on the minimum term of imprisonment. I have received a pre-sentence report, two reports into your personal, whanau, community and cultural background from Ms Shelley Turner, and a psychological assessment of Dr Peter Robertson.

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<sup>4</sup> *Daken v R* [2010] NZCA 212; *R v Lyttle* [2019] NZHC 3454; *R v McDonald* HC Auckland, CRI-2010-092-10476, 13 December 2011; *R v Rogers* HC Auckland, CRI-2006-092-4995, 8 April 2008; *R v Walsh* (2005) 21 CRNZ 946; *R v Lambert* [2020] NZHC 2475; *Lane v R* [2010] NZCA 245; *R v Paewhenua* [2018] NZHC 301; *R v Singh* [2015] NZHC 2369; *R v Te Poono* [2020] NZHC 1188.

<sup>5</sup> *R v Singh*, above n 4, *R v Rogers*, above n 4, *R v Lambert*, above n 4.

[35] Mr Eaton, you have 44 previous criminal convictions since 2006. Most of these are dishonesty and drug related, although there are four violence related convictions. But I do not consider — and nor has the Crown suggested — that a discrete uplift for your previous offending is called for here. Your previous convictions for violence are common assaults and relatively minor by comparison to the charge before me.

[36] On your behalf, Mr Murray has submitted discounts should be made to take account of your personal factors, and I accept that.

[37] Reports like Ms Turner’s are central to ensuring sentencing achieves justice in individual cases, because it is incumbent on the courts to take into consideration how someone’s background has impacted on their life; how their background has shaped them. But there generally needs to be a degree of connection — or a nexus — between someone’s offending and their background.<sup>6</sup> This assessment is not a mechanical one with a strict burden of proof, but an overall look at how personal circumstances might have contributed to culpability or offending.<sup>7</sup> However, I also bear in mind that someone’s intergenerational or immediate background does not mean they are guaranteed to offend. Indeed, such an assumption would deny the offender their mana.<sup>8</sup>

[38] The reports from Ms Turner are wide-ranging and traverse some key themes specific to you including cultural disconnection, relationship dysfunction, family violence, the childhood sexual abuse you suffered, your limited education and your long-standing issues with alcohol and drugs. It seems your father’s abuse was a real turning point in your life, and the trauma associated with that is in many ways central to other problems you face with relationships, drugs, and your general wellbeing. Having your tapu and your mana violated from a young age has clearly had a long-lasting effect on you. The reports also outline the disconnection you feel with Te Ao

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<sup>6</sup> See *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648. But as the Court of Appeal noted in *Waikato-Tuhega v R* [2021] NZCA 503 at [51] there does “not need to be extensive evidence of a nexus between offending and socio-economic and cultural disadvantage for a discount to be granted.”

<sup>7</sup> At [51].

<sup>8</sup> See generally Joe Williams “Build a Bridge and Get Over It: The Role of Colonial Dispossession in Contemporary Indigenous Offending and What We Should Do About It” (Robin Cooke Lecture, 4 December 2019) at 20.

Māori, and the absence of te reo and tikanga in your life. You have been unable to engage in cultural activities that would reinforce your place in the world as a tane Māori. Perversely, the only time you have connected with your culture has been in prison.

[39] As I have noted, the reports are wide-ranging. I acknowledge a slavish requirement for proof of causation is not required, but there does need to be some nexus. In the absence of such evidence, we risk awarding discounts that amount to retrospective determinism, or rendering those who come before the courts mere puppets of circumstance.<sup>9</sup> This is not to say you do not deserve a discount for your background, but my discount must reflect the fact the s 27 reports were not of great assistance in establishing how your personal circumstances might have contributed to your level of culpability for this offending.

[40] I do however bear in mind that outside of Ms Turner's reports, Dr Robertson's report also identifies the sexual abuse you suffered and the profound impact that had on you, as well as your drug addiction. You have also been diagnosed with Posttraumatic Stress Disorder and a Substance Abuse Disorder, for which you are currently on medication.

[41] Mr Murray has suggested some credit should be given for the remorse you have shown. The Crown accepts that to some limited extent that might be appropriate. The pre-sentence report writer recorded that you became tearful throughout the interview and you became emotional when discussing the impact your offending and what that impact has been for Mr Osgood's family. You are also recorded as saying that you wake up every single day knowing that someone died because of you and that you deeply regret your actions on that day. That, however, is a natural consequence of taking another person's life. So the credit to which you might be entitled on account of remorse, in my view, is very limited.

[42] In all, I am satisfied a discount of 10 per cent for personal circumstances is available to you. That includes remorse.

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<sup>9</sup> At 20.

[43] That leads to an adjusted minimum period of imprisonment of 11 years’.

**Result**

[44] Mr Eaton, could you please stand.

[45] For the murder of Ricky Osgood, I sentence you to life imprisonment with a minimum period of imprisonment of 11 years before being eligible for parole.

[46] Before you stand down, I am required to give you a warning of the consequences of another serious violent conviction. You will also be given a written notice outlining these consequences, which lists the ‘serious violent offences’.

[47] If you are convicted of any further serious violent offences, and if a judge imposes a sentence of imprisonment, you will serve the resulting sentence without parole or early release. If you are ever convicted of murder after this warning, you will be sentenced to life imprisonment without parole unless it would be manifestly unjust. In that event the Judge must sentence you to a minimum term of imprisonment.

**[DEFENDANT RECALLED]**

[48] Mr Eaton, I omitted to record your sentence in relation to the charge of perverting the course of justice. On that charge you are sentenced to six months’ imprisonment, which is concurrent on the sentence I have just imposed.

[49] You may stand down now Mr Eaton.